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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-960

LEWIS EDGAR MULLINS,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of the
State of Ohio

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

None of the opinions below are reported in an official reporter at this time. All of the opinions below are included within the appendix of Petitioner's brief.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the validity of a warrantless search of an automobile and the seizure of certain items therein is

ARGUMENT

I. There is No Important Question of Federal Law

In *Carroll v. United States*, 267 U.S. 132 (1925), this Court created an exception to the fourth amendment warrant requirement by holding that the warrantless search of an automobile stopped upon the highway by federal agents who had probable cause to believe the occupants were violating the National Prohibition Act was constitutionally permissible. This Court reasoned in *Carroll* that to require a search warrant in such circumstances would give the alerted occupants the time to utilize the mobility of their car to destroy its contents. This Court also in *Carroll* distinguished the theoretical justification required for the search of a car from that required for a search incident to an arrest:

> "The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law." 267 U.S. at 158-159.

Subsequent decisions of this Court have reaffirmed the holding of *Carroll* and have amplified its reasoning; *Husty v. United States*, 282 U.S. 694 (1931), *Scher v. United States*, 305 U.S. 251 (1938), *Brinegar v. United States*, 338 U.S. 160 (1949), *Preston v. United States*, 376 U.S. 364-367 (1964), *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968) and *Chambers v. Maroney*, 399 U.S. 42 (1970). The decision in *Chambers* underscored the vitality of the *Carroll* holding by stating that:

> "(But) the circumstances that furnish probable cause to search a particular auto for particular articles are most often unforceable moreover, the opportunity to search is fleeting since a car is readily

> moveable. Where this is true, as in *Carroll* and the case before us now, if an effective search is to be made at any time, either the search must be made immediately without a warrant or the car itself must be seized and held without a warrant for whatever period is necessary to obtain a warrant for the search." 399 U.S. at 50-51.

This Court went on in *Chambers* to hold that, given probable cause, neither an immediate search nor one conducted after holding the car and obtaining a warrant violate the principles or protections of the fourth amendment.

II. The Decision Below is Clearly Correct.

The decision of the Franklin County, Ohio Court of Appeals recognized the reasoning of the *Chambers* decision in finding that the arresting officer involved in Petitioner's situation had probable cause to search the automobile and therefore, the Court of Appeals reasoned, the search was constitutionally permissible. The record clearly reflects that the knowledge possessed by the arresting officer of Mr. Mullins and his activities undeniably illustrates that probable cause was present to search his automobile. The affidavit of the arresting officer, used as the basis for the issuance of the search warrant, stated that information provided by reliable informants and the officer's own personal knowledge of the activities of the defendant regarding numbers operations gave him probable cause to believe that numbers slips could be found on the person of the defendant and inside the automobile of the defendant. Further, the arresting officer, immediately preceding the search of the person of the defendant, noticed an exchange of money between the defendant and another unidentified individual. Upon

searching the defendant, the officer found over one hundred dollars in cash. These facts combined with those contained in the officer's affidavit amply evidence the probable cause necessary to search the automobile without a warrant.

Moreover, the affidavit related the intent of the arresting officer to make the particular car mentioned the subject of the search but a clerical error was responsible for its omission from the search warrant itself. For all practical purposes, the search of the car had judicial approval as required. *Katz v. United States*, 389 U.S. 347 (1967)

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,
JAMES J. HUGHES, JR.,
DANIEL W. JOHNSON,
Attorneys for Respondent.

CERTIFICATE OF SERVICE

We hereby certify that on this day of February, 1972, three copies of the foregoing Brief in Opposition to a Petition for Writ of Certiorari were mailed, postage prepaid to Mr. L. R. Curtis and Mr. Daniel L. Mann, Counsel for Petitioner at 233 South High Street, Columbus, Ohio. We further certify that all parties required to be served have been served.

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